

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PATRICK S. MULLIGAN,

Plaintiff,

ORDER

v.

08-cv-364-bbc

MICHAEL ASTRUE,
Commissioner of Social Security,

Defendant.

On September 8, 2009, the court of appeals remanded this case to the commissioner for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g), concluding that the findings of a medical improvement were not based on substantial evidence. Now before the court is plaintiff's application for an award of attorney fees, expenses and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412. Plaintiff is seeking attorney fees in the amount of \$6,625, expenses in the amount of \$238.95 and costs in the amount of \$805. Plaintiff has produced a fee assignment in which he has assigned any EAJA fees to his lawyer, Timothy T. Sempf.

As an initial matter, the parties agree that I should enter final judgment in this case remanding the case to the commissioner in accordance with the July 13, 2009 decision of

the court of appeals. Therefore, I will order that the decision of defendant Michael J. Astrue, Commissioner of Social Security, denying plaintiff Patrick S. Mulligan's application for disability insurance benefits be reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) and that judgment be entered accordingly.

With respect to the application for attorney fees, defendant does not argue that his position was substantially justified. Further, he agrees with the overall reasonableness of the fees requested. However, he points out that plaintiff has included costs in the amount of \$805 in his fee request. Such costs are payable separately under 28 U.S.C. § 2412(a) and 28 U.S.C. § 1920 rather than under 28 U.S.C. §2412(d), which covers reasonable attorney fees and expenses.

ORDER

IT IS ORDERED that

1. The decision of defendant Michael J. Astrue, Commissioner of Social Security, denying plaintiff Patrick S. Mulligan's application for disability insurance benefits is REVERSED AND REMANDED pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with this opinion. The clerk of court is directed to enter judgment for plaintiff and close this case.

2. The petition of plaintiff for an award of attorney fees and expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), is GRANTED. Plaintiff's lawyer, Timothy T. Sempf, is awarded fees and expenses in the amount of \$6,863.95.

3. Plaintiff's application for an award of costs is GRANTED. Costs in the amount of \$805 are awarded pursuant to 28 U.S.C. § 2412(a).

Entered this 5th day of January, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge